IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1344 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAKTISINH GHANSHYAMSINH PARMAR

Versus

KASHMIRADEVI SHAKTISINH PARMAR

Appearance:

1. Civil Revision Application No. 1344 of 1999

MR SS PANESAR for Petitioner No. 1

MR PV NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 13/12/2001

ORAL JUDGEMENT

#. This Revision is directed against an order passed by the learned City Civil Judge, Court No.14, Ahmedabad on 29.4.1999 below the application filed by opponent - wife at Ex.10 in Hindu Marriage Petition No.312/1998. It

appears that the present applicant - husband preferred a Hindu Marriage Petition No.312/1998 in the Court of City Civil Judge and this application Ex.10 came to be filed by wife - opponent for interim maintenance to the tune of Rs.7,500/- for herself as well as for her minor child aged about 8 years.

#. It was contended by the opponent - wife that the applicant has deserted her, even her father-in-law and mother-in-law are living with her alongwith the minor child aged about 8 years. It was stated that applicant was Senior Police Officer in the State Government and was earning Rs.17,000/- p.m. and the present applicant original applicant - husband was also earning Rs.12,000/to Rs.13,000/- p.m. from the other income like shares, debentures. It was contended that the parents-in-law are being looked after by wife - present opponent. It was contended that the son is studying in Gujarat Law Society School in 3rd standard. In reply, the present applicant denied that that he was earning Rs.17,000/- p.m. and he produced a certificate from Senior Police Inspector, Kagdapith Police Station, and according to the certificate his salary was Rs.9,150/gross. It was denied by the husband that he had some other income. The wife in her rejoinder reiterated that the say of the husband was not correct and that the husband, present applicant was staying somewhere else i.e. at C-405, Suvidha Apartment, which was purchased by him. The father-in-law of the opponent wife, is a retired Government servant and was getting only pension income of Rs.2938/- p.m. The mother-in-law of the opponent wife had severe heart trouble, costing medical treatment to the tune of Rs.60,000/-. After hearing both the sides, learned City Civil Judge directed the husband - present applicant to pay to the wife - opponent a sum of Rs.5,000/- p.m. pendente lite every month towards interim alimony as well as Rs.1,000/- p.m. towards the maintenance of their son every month. It was also directed that a sum of Rs.5,000/- be paid by the opponent -husband to the wife towards the cost of the proceeding. The above order is under challenge in this Revision. The learned advocate Mr.M.R.Khatan for Mr.Panesar vehemently objected the order of the City Civil Judge on the grounds that the learned Judge believed the say of the opponent while a salary certificate that was issued by the Inspector Senior Officer of the present applicant denotes salary of Rs. 9,150.00. The learned City Civil Judge wrongly concluded that there was no pay slip produced on the record and that in those circumstances the salary of the present applicant was to the tune of Rs.17,000/-. The learned advocate contended that now the pay slip is

produced in this proceeding and the attention of this Court was drawn to the pay slip in which gross salary of the applicant for the month of June, 1999 is shown to be Rs.9,150/-. Therefore, it was urged that the trial Court erroneously believed that the salary of the applicant was Rs.17,000/and awarded amount of Rs.1,000/- to the wife and Rs.1,000/- to the minor child. In this revision petition, the quantum of the interim maintenance granted is impugned and not the whole order. It was therefore urged that only one third of the salary which is at interlocutory stage proved, can be awarded by the Court as an alimony. The learned advocate for the petitioner relied upon a decision of this Court in Ashokkumar Kantilal Rathod vs. Bhavnaben Ashokkumar Rathod, as reported in GLR Vol.2000 (4) at page 3454 wherein the Court observed that normally rule would be to grant one third of the income of the husband as interim maintenance. The learned advocate for the petitioner also places reliance on another decision of this Court in the matter of Dharamsi Dahyabhai Patel vs. Devyani Dharamsi Patel, as reported in GLR 1993 Vol.34 (1) at page 387 wherein this Court was pleased to observe that the fixation of quantum of maintenance cannot be the matter of mathematical certainty and amount of maintenance should be fixed in such a way so as not to keep the wife in luxury and make judicial separation profitable and the husband becoming a destitute. It was therefore urged that the quantum of maintenance awarded by the trial Court, to the wife be reduced to the reasonable extent that is upto one third of the gross income because the trial Court, according to learned advocate erred in coming to the conclusion that the applicant - husband was earning Rs.17,000/- p.m.

#. While the learned advocate Mr.P.V.Nanavati, for the respondent herein i.e. opponent wife in original proceeding pointed out that the parents of the applicant husband are residing with the wife and the present respondent wife is looking after both of them in addition to minor child. The fact prima facie according to learned advocate discloses that the husband deserted the wife because of some relation with other lady. The learned advocate emphasised that the husband is staying in other premises which is owned by him and the fact has not been specifically denied by the applicant husband. It was also urged that the conduct of the petitioner is required to be seen that the husband has not paid the full amount of maintenance awarded uptil now. As against this, the learned advocate for the petitioner drew attention of this Court to the receipt passed by the wife that she has received Rs.15,000/- towards maintenance.

#. Having heard both the sides there cannot be any dispute as to the principle of law that the interim maintenance can be awarded to the wife in proportion and in reasonable ratio of the income of the husband, nor it can be denied that by way of interim alimony, wife can be allowed a luxury and make judicial separation a profitable circumstance. The peculiar facts of this case goes to suggest that both the parents of the husband are staying with the wife who is looking after them. The father-in-law of the wife has meagre pension income. There are in all four members including wife and out of them mother-in-law remains sick and minor child is studying in School. Normally rule of one third part of the net income will have to be deviated in these peculiar circumstances. True it may be that the husband might be earning salary gross at the rate of Rs.9,150/- p.m. but the fact remains that the husband resides separately in separate building which denotes that the husband has some other income over and above the salary income. The father of the husband and father-in-law of the wife has filed an affidavit on this aspect. This glaring peculiar circumstance of the case cannot be overlooked though the trial Judge awarded the amount of Rs.5,000/- to the wife and Rs.1,000/- to the minor child keeping in mind the salary income at Rs.17,000/- p.m. Having further scrutinizing the circumstances and the facts of the case prima facie, even if the salary of the husband is Rs.9,150/- the order passed by the trial Court for awarding Rs.5,000/- to the wife and Rs.1,000/- to minor child cannot be interfered with. In this view of the matter, in revisional jurisdiction, the order impugned, requires no interference, on the grounds contended above.

#. In this view of the matter, this Revision Application fails and dismissed. Rule is discharged. D.S. is permitted.

(J. R. VORA, J.)
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